IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.F.A.No.1744 of 2007 (O&M)
Date of Decision : 03.08.2007

Ujjagar Singh and another .....Appellants

versus

The State of Punjab and another .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Mr.Pritam Saini, Advocate for the appellants.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

C.M.No.4204-CI of 2007

The application is allowed. The appellants are permitted to file the present appeal to claim the estate of deceased Smt.Rakhi, subject to all just exceptions.

C.M.No.4205-CI of 2007 &
R.F.A.No.1744 of 2007

The present appeal is directed against the award of the Reference Court dated 16.1.1998. The appellants have sought condonation of delay of 3262 days i.e. approximately nine years in filing the appeal.

It is the case of the appellants that the land measuring 1593 kanals 8 marlas was acquired vide notification dated 5.4.1990. The Land Acquisition Collector awarded the amount of compensation vide award dated 9.6.1992 and the learned Reference Court vide award dated 16.1.1998 enhanced the compensation at the flat rate of Rs.3,40,000/- per acre. In

appeal, against the award of the learned Reference Court, filed by the Punjab State Electricity Board, this Court passed an order on 20.2.2001 staying the payment of 50% of the enhanced amount of compensation. The payment 50% of the enhancement amount of compensation was received by the appellants, even though their mother had expired on 1.2.2000. Now, the present appeal has been filed by the appellants alongwith an application for condonation of delay, on the ground that now the appellants have come to know that no appeal has been filed by their mother Rakhi. It is pointed out that, in fact, the State of Punjab has filed a Special Leave Petition before the Hon'ble Supreme Court of India, wherein the matter is pending for final decision.

A perusal of the averments made in the application would show that the present application for condonation of delay has been filed after this Court enhanced the compensation to Rs.5,80,000/- per acre, vide order dated 26.4.2006. The ignorance pleaded by the appellants that they were not aware that any appeal or cross objection has been filed on their behalf, cannot be believed as they have received the 50% payment of the enhanced compensation after the order passed by this Court. The appellants are seeking condonation of delay in filing the appeal after the decision of the appeal in another case in respect of same acquisition. This Court in case ***"Bhushan Kumar and others versus State of Haryana and others (R.F.A.No.2143 of 2000, decided on 4.9.2003)"*** has considered various judgments on the issue of condonation of delay in the land acquisition cases. After considering the said judgment, this Court concluded as under:-

> "The proposition of law laid down in the judgments referred to by the learned counsel for the appellants is

not in dispute. It is also not in dispute that the provisions of limitation has to be construed liberally and in favour of the suitor, but where the principles laid down in the judgments, referred to above, are applicable. One of the principles which has been laid emphasis that ordinarily a litigant does not stand the benefit on account of delay. Herein, the appellants have sought condonation of delay after the appeal was allowed in another case. The appellants were satisfied with the amount of compensation and have thought of filing appeal only when compensation was enhanced in the other cases. Still further, the substantial justice is not qua the appellants alone, but justice to the parties. It appears that the appellants have taken a conscious decision of not filing appeal being satisfied with the award enhanced by the learned Additional District Judge. The appellant could not be compelled to file an appeal and to claim compensation. A right vested with the appellants to seek enhanced compensation in appeal. However, no such right was exercised, therefore, after the decision of the appeal invocation of jurisdiction is mala fide.

In Balakrishanan case, one of the guidelines is that when the Courts condone the delay due to laches the Court shall compensate the opposite party for its loss. How the opposite party can be compensated with the loss in Land Acquisition Cases. The claim of compensation is claim of money. If delay is condoned, the appeal is bound to be allowed and the opposite party is liable to pay enhanced compensation with interest, even though the appellants have failed to invoke the jurisdiction of this Court for a long period. The opposite party cannot be compensated for the loss if the application for condonation of delay is to be

> allowed. If the amount of compensation is to be enhanced, the liability of the State is to pay interest on the enhanced amount of compensation from the date of taking over of the possession. By inaction or the conscious decision, if the appellants have decided not to file appeal, the State cannot be burdened with the financial liability whereby the State is made to pay even interest for the delay of the appellant."

The principles laid down in the aforesaid judgment are applicable with full force in the present case. The appellants has sought to condone the delay in filing of appeal after the appeals in respect of same acquisitions were decided and the amount of compensation was increased substantially. For all these years, the appellants were satisfied with the amount of compensation awarded. The appellants have sought to dispute the amount of compensation only after the appeals of other land-owners were allowed by this Court. This, I am of the opinion that filing of appeal at this stage lacks bona fide.

In view of the above, I am satisfied that the appellants have not made out any sufficient cause to seek condonation of delay of 3262 days in filing the appeal.

Dismissed.

03-08-2007 **(HEMANT GUPTA)**
*mohinder **JUDGE**